

Supreme Court, U. S.

FILED

JUN 29 1978

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No.

77-1856

HAROLD WOODFORD,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DAVID SEGAL
Attorney for Petitioner
11 Broadway
New York, N.Y. 10004
(212) 943-5668

Dick Bailey Printers, 290 Richmond Ave., Staten Island, N.Y. 10302

Tel.: (212) 447-5358

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**PETITION FOR A WRIT OF CERTIORARI
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APPEALS FOR THE SECOND CIRCUIT**

Harold Woodford petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Second Circuit, which affirmed a judgment of conviction of the United States District Court for the Southern District of New York.

Opinion Below

The judgment of conviction of the United States District Court for the Southern District of New York is unreported.

The Court of Appeals affirmed the judgment of conviction without opinion (see Appendix A) dated May 30, 1978.

Jurisdiction

The judgment of the Court of Appeals was dated and entered on May 30, 1978. Jurisdiction is conferred upon this Court by 28 U.S.C. 1254(1).

Questions Presented

1. Was the appellant adequately represented by counsel at the trial in that trial counsel made no application to suppress the appellant's past criminal record, thus enabling the prosecutor to utilize past convictions specified by the appellant to impeach his credibility, when he testified in his own behalf?
2. Did appellant have effective assistance of counsel in that (a) a defense witness was called and testified and trial counsel knew that the Government had a taped conversation participated in by that witness with a Government agent, which implicated the appellant and established that the witness' testimony was not truthful; and (b) furthermore, the Government was allowed to introduce a tape recording in rebuttal to impeach a defense witness where the subject matter and the hearsay in the tape related to a collateral issue?

Statement of the Case

Petitioner, Harold Woodford, was indicted and charged in two counts of an indictment based on 21 U.S.C. 812, 841(a)(1) and 841(b)(1)(A) and 18 U.S.C. 2d, namely, the unlawful distribution and possession with intent to distribute narcotics, namely, heroin, as alleged in said counts. Petitioner was convicted on both counts and was sentenced to an eight year jail term under each and every count of the indictment, to be served concurrently

and additionally, a mandatory special parole term of six (6) years following the appellant's service of the sentences as aforesaid.

Petitioner appealed from his conviction to the United States Court of Appeals for the Second Circuit which affirmed the conviction.

The charges herein stem from Petitioner selling heroin to one Lucille Williams on two (2) separate occasions. Williams was cooperating with the Government on these two occasions.

Reasons for Allowing the Writ

1—Failure of Trial Counsel to Move to Suppress Petitioner's Past Record

Petitioner urges this Court to find that trial counsel's representation was inadequate in that counsel made no application to suppress the petitioner's past criminal record, thus enabling the prosecution to utilize past convictions specified by the petitioner to impeach his credibility when he testified in his own behalf.

It is respectfully submitted that a balancing must be had where the prior conviction and the crime alleged in the indictment relate to the same type of offense.

Further, the case should be remanded to the trial court so that an evidentiary hearing may be held to consider whether petitioner was advised by counsel that a motion could be made, prior to trial, to suppress prior convictions, thereby enabling petitioner to make a reasoned choice to testify in his own behalf or to remain silent.

2—Petitioner Did Not Have the Effective Assistance of Counsel

Petitioner submits that he did not have effective assistance of counsel in that (a) a defense witness was called and testified and trial counsel knew that the government had a taped conversation participated in by that witness with a government agent, which implicated the appellant and established that the witness' testimony was not truthful; and (b) furthermore, the Government was allowed to introduce a tape recording in rebuttal, to impeach a defense witness where the subject matter and the hearsay in the tape related to a collateral issue.

Petitioner respectfully submits that the representation of trial counsel was inadequate, that said representation was a farce and a mockery of justice. *U.S. v. Wight*, 176 F.2d 376, 379 (2nd Cir. 1949) cert. denied 338 U.S. 950..

CONCLUSION

Certiorari should be granted and the judgment below reversed.

Respectfully submitted,

David Segal
Attorney for Petitioner
11 Broadway
New York, N.Y. 10004

A P P E N D I X

**APPENDIX A—ORDER OF UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT**

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the thirtieth day of May one thousand nine hundred and seventy-eight.

Present: HON. HENRY J. FRIENDLY
HON. WILLIAM H. TIMBERS, *Circuit Judges*
HON. WALTER E. HOFFMAN, *District Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

HAROLD WOODFORD, a/k/a "Harold Kilpatrick",
Defendant-Appellant.

77-1472

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was taken on submission.

ON CONSIDERATION WHEREOF, it is now

hereby ordered, adjudged, and decreed that the Judgment of said District Court be and it hereby is affirmed in accordance with the Court's oral opinion in open court.

A. DANIEL FUSARO,
Clerk

By **ARTHUR HELLER,**
Deputy Clerk